IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16068 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? YES

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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MUSLIM VIDHYARTHI PRAKRATI MANDAL TRUST - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MRS ARTI H NANAVATI for Petitioner(s) : 1,MR HJ NANAVATI for Petitioner(s) : 1,
MR SUNIT SHAH, GOVERNMENT PLEADER WITH MR UMANG OZA, AGP. for Respondent(s) : 1 - 2.
NOTICE NOT RECD BACK for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 07/08/2007

ORAL JUDGMENT

1 This petition is filed with the following prayers :

> *"(A) Allow this petition.*
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> *(B) Declare that the action and/or non-action on the part of respondent authorities in not granting the management quota to the petitioner trust for filling up the seats in the PTC course run by the petitioner institution established by the petitioner, being discriminatory, arbitrary and violative of Article 30 of the Constitution of India.*
>
> *(C) Declare that the action of the respondent authorities in not prescribing the quota to the petitioner trust, which is a religious minority trust and further not obeying the declaration given by the Central Statutory Body is arbitrary and amounts to enrode the right of a minority institution and thereby violates Article 30 of the Constitution of India.*
>
> *(E) Direct the respondents, their officers and servants to allow the petitioner institution to fill up the seats of admission in First Year PTC course by providing 50% quota to the petitioner college management and further direct them not to interfere with the process of admission which may be undertaken by the petitioner trust".*

2 Having heard the learned Advocate for the petitioner and learned Government Pleader appearing on behalf of the respondent authorities the petition is taken up for final hearing

and disposal considering the limited scope of controversy between the parties. **Rule**. Learned Advocate appearing on behalf of the respondents is directed to waive service.

3 The principal grievance of the petitioner is action and/or inaction on the part of respondent State Government authorities in not granting the status of minority institution to the petitioner institution for the purposes of grant of admission to the students seeking admissions in the First Year P.T.C. Course run by the petitioner for Academic Year 2007-2008 though the petitioner-Trust and institution has been recognised as religious minority belonging to Muslim community within the meaning of Section 2(g) of *The National Commission for Minority Educational Institutions Act, 2004* (the Act) by the National Commission for Minority Educational Institutions vide certificate dated 18.04.2007.

4 As against that on behalf of the respondent authority by referring to provisions of the Act including amendments made by the National Commission for Minority Educational Institution (Amendment) Act, 2006 it was contended that the petitioner has wrongly placed reliance on the certificate dated 18.04.2007 because, according to the respondent authority,

the Commission is not entitled to issue any such certificate considering the scheme of the Act and the facts and circumstances of the case.

5 It is an accepted fact that Director, Primary Education Department, State of Gujarat has been appointed as a Competent Authority under the provisions of the Act by the State Government taking into consideration the definitions of the terms “competent authority” within the meaning of Section 2(ca), and “appropriate Government” within the meaning of Section 2(aa) of the Act. The petitioner applied to the Competent Authority on 21.09.2006 by Registered Post Acknowledgment Due but according to the petitioner the Competent Authority has failed to respond to the application made by the petitioner. As there was no reply from the Competent Authority the petitioner sent a reminder dated 14.03.2007. Thereafter, correspondence ensued between the parties but admittedly no decision was taken by the Competent Authority. In the meantime it appears that on 02.06.2007 a public advertisement came to be issued in relation to admissions to P.T.C. Course for Academic Year 2007-2008 and it is the say of the petitioner that in the list published by the respondent authority relating to Minority

Educational Institutions the name of the petitioner institution does not figure. Hence the petition.

6 As can be seen from provisions of Section 10 of the Act any person who is desirous of establishing a Minority Educational Institution may apply to the Competent Authority for grant of No Objection Certificate for the said purpose. Under sub-section (2) of Section 10 of the Act the Competent Authority is required to decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the facts warrant. The Proviso under sub-section (2) of Section 10 of the Act requires that where an application is rejected the Competent Authority is bound to communicate the order of rejection to the applicant. Under Section 12A of the Act any person aggrieved by the order of refusal is entitled to prefer an appeal against such order to the Commission. However, in a case where the Competent Authority either does not grant the No Objection Certificate or, where application has been rejected and such rejection is not communicated to the applicant, within a period of ninety days form the receipt of the application under sub-section (1) of Section 10 of the Act, Section 10(3) of the Act provides that it shall be deemed that the Competent Authority has granted

No Objection Certificate to the applicant. Thus in a case where either the application is not processed and dealt with, or in a case where the application is rejected but rejection is not communicated, both within a period of ninety days from the date of receipt of the application, the provisions create a deeming fiction whereunder the application is deemed to have been allowed and No Objection Certificate granted.

7 It is necessary to note that under Section 12B of the Act the Commission has been granted appellate powers to decide on the minority status of an educational institution. However, for the present it is not necessary to deal with those powers for the simple reason that there is no lis between the parties on this count. In fact the certificate issued by the Commission on 18.4.2007 declaring the petitioner to have the status under Section 2(g) of the Act is premature. Section 2(g) of the Act defines “Minority Educational Institution” to mean a College or Institution (other than a University) established or maintained by a person or group of persons from amongst the minorities. Therefore, the first requirement is that a College or Institution for the purpose of education has to be established, only then the question of granting that status would arise. In the fact situation of the present case there is a deemed grant of No

Objection Certificate for establishing a Minority Educational Institution. Hence, there can be no question of granting the status before that point of time. Even otherwise considering the amended provisions of the Act, more particularly Section 12B of the Act it is a moot question whether the Commission can issue such a certificate on its own without exercise of the appellate powers with which the Commission has been specifically vested under Section 12B of the Act. Normally, no appeal would lie before the same authority/forum against whose order the Statute has provided a right to appeal.

8 However, it is not necessary to dwell any further on the aforesaid aspect. Suffice it to state that undisputed facts reveal that on operation of law, more particularly Section 10(3)(a) of the Act, the Competent Authority having not granted No Objection Certificate within the stipulated period of ninety days from the date of receipt of the application under Section 10(1) of the Act, by virtue of deeming fiction a state of affairs comes about whereunder the Competent Authority is deemed to have granted a No Objection Certificate to the applicant. As a natural corollary the respondent authority is required to ensure that all the consequential entitlements which a minority educational institution is entitled to in connection

with running a P.T.C. College shall be granted to the petitioner. The respondent authority is accordingly directed to undertake such an exercise at the earliest point of time.

9 The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt